

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Biennial Regulatory Review of Regulations	)	WC Docket No. 02-313
Administered by the Wireline Competition	)	
Bureau	)	

**COMMENTS OF COVAD COMMUNICATIONS**

Covad Communications, by its attorneys, herewith respectfully submits its comments in response to the Commission’s Notice of Proposed Rulemaking seeking comment on modifications to the Commission’s rules administered by the Wireline Competition Bureau as part of the Commission’s Biennial Regulatory Review process.<sup>1</sup> Covad limits its comments to one aspect of the Commission’s *NPRM*, specifically its request for comment on modifications to the Commission’s rules governing notice of network changes.<sup>2</sup> Covad agrees with the Commission that modifications to the Commission’s rules are needed to effectuate the new policies for hybrid fiber-copper loops and fiber-to-the-home (FTTH) loops adopted by the Commission in the *Triennial Review Order*.<sup>3</sup> Accordingly, Covad respectfully submits its recommendations for the Commission’s modifications to these rules.

**I. Covad Supports the Commission’s Proposed Changes to Rule 51.329(c)(1)**

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<sup>1</sup> See *Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, WC Docket No. 02-313, Notice of Proposed Rulemaking, FCC 03-337 (rel. Jan. 12, 2004) (*NPRM*).

<sup>2</sup> See *id.* at paras. 19-20.

<sup>3</sup> See *id.* at para. 19 (citing *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98 and 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, 18 FCC Rcd 16978, 17141, 17146-48, paras. 271, 281-84 (*Triennial Review Order*)).

Covad agrees with the Commission that more information needs to be disclosed in ILECs' notice of network changes replacing copper whole loops or copper subloops with fiber.<sup>4</sup> Accordingly, Covad supports the Commission's proposal to require ILECs to include in the titles of their network change notices specific titles identifying the notices for (1) replacement of copper whole loops with FTTH loops; and (2) replacement of copper subloops with fiber to create hybrid fiber-copper loops.<sup>5</sup> Covad believes that including such titles in network change notices will aid affected carriers by identifying which type of copper-fiber replacement the ILEC is planning, and concomitantly which set of notice requirements applies to the network change under section 51.333 of the Commission's rules.<sup>6</sup>

## **II. The Commission Should Clarify that Its Network Change Notice Rules Require Precise Information Regarding the Proposed Change**

Covad believes that the Commission should take additional steps to ensure that its network change notice rules are operating in the manner intended – both to ensure that affected carriers are provided full information about the planned network change, and to ensure that the Commission's new policies for FTTH and hybrid fiber-copper loops are faithfully implemented. Specifically, the Commission should take this opportunity to clarify the required content of network change notices for replacement of copper loops or subloops with fiber, including “the location(s) at which the change will occur;” “the type of changes planned,” and “the reasonably foreseeable impact of the planned changes.”<sup>7</sup> Often, affected carriers receiving network change notices for copper-fiber replacement

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<sup>4</sup> See *NPRM* at para. 20.

<sup>5</sup> See *id.*

<sup>6</sup> See 47 C.F.R. § 51.333.

<sup>7</sup> 47 C.F.R. § 51.327.

plans are unable to determine, based on the content of the notice alone, what specific locations are affected by the planned change. Accordingly, the Commission should make clear that ILECs providing notice of such changes must include, at a minimum, wire center locations, circuit identifiers and individual street addresses for end users affected by each such proposed change. This is the only way affected carriers can determine whether specific end users are affected by an ILEC's planned copper-fiber replacement.

### **III. The Commission Should Clarify that Its Network Change Notice Rules Require Information Regarding Plans to Avoid End User Disruption**

In addition, the Commission should require ILECs submitting such notices to make clear in each notice what measures they propose to undertake to ensure that any existing end user services are not terminated as a result of the proposed change. Far too often, ILECs will simply announce a planned fiber deployment at a broad geographic level (e.g., by community or neighborhood) with the implication that existing customers of competitive carriers using copper pairs currently in service will be disconnected. This leaves the competitor serving such customers to subsequently assert its contractual rights to continue purchasing those copper pairs in order to avoid any disconnection per the announcement. Rather than forcing affected carriers through such a roundabout process, the Commission should require ILECs to adhere to their current obligations to accurately convey the "locations of the planned changes" and their "reasonably foreseeable impact," including what provisions the ILEC will make to meet its existing contractual obligations to continue performing under existing interconnection agreements.

For example, while the new rules in the *Triennial Review Order* may allow ILECs to refuse to provision new orders for the packet-switched functionalities of hybrid fiber-

copper loops as UNEs,<sup>8</sup> they do not enable ILECs to unilaterally withdraw copper facilities already provisioned to and paid for by the purchasing competitive carrier. Nothing in the *Triennial Review Order* absolves ILECs of their contractual duty to perform the provisioning of copper loop facilities (still required to be unbundled under the *Triennial Review Order*) under existing interconnection agreements. Moreover, where such facilities are already ordered, already being paid for, and already in service, nothing in the *Triennial Review Order* absolves ILECs of their contractual duties to comply with the service discontinuance provisions negotiated and agreed to in their existing interconnection agreements. Accordingly, notwithstanding their broader announcements of planned copper-fiber replacements by community or neighborhood, in most situations ILECs simply lack the legal power to unilaterally disconnect unbundled copper facilities where such facilities are already in place and already in service.

Unfortunately, despite these contractual limitations on their authority to disconnect copper facilities to competitors' existing customers, ILECs regularly announce planned copper-fiber replacements without specifically identifying any companion plans to accommodate their legal obligations to continue provisioning copper facilities to competitors' customers already in service. This clearly runs afoul of their duties to announce accurately the "location(s) at which the changes will occur" and the "reasonably foreseeable impact of the planned changes."<sup>9</sup> Accordingly, Covad urges the Commission to clarify its rules to make clear that, in their network change notices announcing plans to replace copper with fiber, ILECs must also identify what plans they have to accommodate ongoing legal obligations to continue provisioning copper facilities

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<sup>8</sup> See 47 C.F.R. § 51.319(a)(2)(i).

<sup>9</sup> 47 C.F.R. § 51.327.

to competitors' customers already in service. Requiring ILECs to make such plans clear in their network change notices would avoid the circuitous route that competitive carriers must currently follow of: (1) identifying any existing end users encompassed in a broad ILEC notice of copper-fiber replacement; (2) asserting contractual rights under existing interconnection agreements to prevent any service discontinuance for such end users; and (3) working with the ILEC, on an ad hoc basis, to develop plans for the continued provisioning of existing access or a suitable alternative for such end users. Rather than forcing competitive carriers through such a circuitous merry-go-round, ILECs should simply disclose up front what plans they have in store to meet their existing contractual obligations for competitive carriers' existing end users – a disclosure that their existing obligation to announce the location and impact of a planned network change already includes. Thus, Commission should take this opportunity to enforce its existing obligations for ILEC network change notices, by clarifying that its existing rules require ILECs to disclose up front their plans for continuing to provision existing circuits to competitive carriers' customers already in service.

#### **IV. The Commission Should Clarify that Its Network Change Notice Rules Do Not Constitute *De Facto* Approval of ILECs' Planned Network Changes**

Finally, Covad urges the Commission to clarify its network change notice rules by explaining that they do not provide ILECs with carte blanche to disconnect competitive carriers' existing and prospective customers. Far too often, ILECs treat the Commission's network change notice filing requirements as *de facto* FCC approval of the announced change, when in fact these rules simply provide a vehicle for notice to carriers affected by the desired network change. The Commission should make clear that network change notifications are designed to provide CLECs and their customers with

notice of changes, not to provide ILECs with an FCC validation of a disconnection of customers. Furthermore, the Commission should make clear that simple compliance with the Commission's network change notice rules does not relieve ILECs of their obligation to comply with any applicable legal obligations with respect to planned network changes, such as copper-fiber replacement plans. For example, as discussed above, simple compliance with the Commission's network change notification requirements does not relieve ILECs of their contractual obligations to continue performing under their interconnection agreements, including the delivery of existing facilities already ordered and in service (or, where negotiated and agreed to by both parties, a contract modification enabling a suitable access alternative). In addition, simple compliance with the Commission's network change notification requirements does not relieve ILECs of their obligations to comply with parallel legal and regulatory requirements, such as state commission approval of the planned network change.<sup>10</sup>

Thus, the Commission should make clear that its network change notice rules do not constitute *de facto* approval of the planned network change, and only operate to provide affected carriers and customers a vehicle for notice of the planned change. Furthermore, the Commission should make clear that its network change notice rules do not relieve ILECs of their existing duties to comply with applicable legal obligations with respect to the planned change, including contractual obligations under their interconnection agreements and state regulatory obligations.

## V. Conclusion

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<sup>10</sup> Indeed, as the Commission recognized in the *Triennial Review Order*, state commissions routinely exercise regulatory authority over ILEC networks, including the retirement of copper facilities. *See Triennial Review Order* at para. 284. Furthermore, the Commission noted expressly that its new rules limiting competitor access to loops containing fiber did not preempt such state regulatory oversight. *See id.*

Covad respectfully urges the Commission to adopt its own proposed changes to rule 51.329(c)(1), as well as Covad's proposed clarifications to the network change notice rules. These changes will enable the network change notice process to work beneficially for affected carriers and customers alike, by rendering ILEC notices of planned copper-fiber replacements more meaningful vehicles of real notice, and by more faithfully effectuating the Commission's policies for FTTH and hybrid fiber-copper loop deployment.

Respectfully submitted,

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